



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2017-0011]

James River, Skiffes Creek, and Warwick River Surrounding Joint Base Langley-Eustis (JBLE-Eustis), Virginia; Restricted Areas and Danger Zones

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing restricted areas and danger zones in the waters of the James River, Skiffes Creek and Warwick River in Newport News, Virginia. JBLE-Eustis contains a military port, berthing numerous Army vessels, and conducts exercises to include small craft testing and live fire training activities. The amendment is necessary to protect the public from hazards associated with training and mission operations, and to protect government assets, missions, and the base population in general. The amendment increases the restricted areas and creates danger zones surrounding the existing installation and firing ranges.

DATES: Effective date: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, D.C. at 202-761-4922.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the May 23, 2018, edition of the Federal Register (83 FR 23864) and the regulations.gov docket number was COE-2017-0011. In response to the proposed rule, three comments were received. One commenter stated that additional clarification was needed regarding the proposed areas coordinates because as written it is unclear what the intended extent of the areas should be, therefore, the applicant provided corrected coordinates and modified the rule text to address the charting concerns.

Another commenter stated that they are not in opposition to the proposal, however, they believe that an Environmental Impact Statement (EIS) should be provided to the public prior to the comment period closing. The preliminary review prior to publishing the proposed rule for comment determined that an EIS was not warranted for the proposed rule and no additional information was identified during review warranting a change to this finding.

One commenter stated that they fully support the proposed restricted areas and danger zones, and no further evaluation was warranted.

In response to a request by the United States Air Force, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat.

892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR 334.280 to establish permanent restricted areas and danger zones, in the waters of the James River, Skiffes Creek, and Warwick River in Newport News, Virginia. The permanent restricted areas and the danger zones are necessary to protect the public from hazards associated with training and mission operations, and to fulfill the current security needs of the Department of the Air Force to protect government assets, missions, and the base population in general at the facility.

Procedural Requirements

a. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. For the reasons stated below, this final rule is not a “significant regulatory action” under Executive Order 12866. Accordingly, this final rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this final rule is not a significant regulatory action. This regulatory action determination is based on the rules governing the restricted areas, which allow any vessel that needs to transit the restricted areas and danger zones to do so if the operator of the vessel obtains permission from Commander, JBLE-Eustis, and/or other persons or agencies as he/she may designate.

b. Impact on Small Entities.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the restricted areas may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted areas and danger zones are necessary to protect vessels and personnel assigned to JBLE-Eustis by implementing a waterside security program. They are also necessary to protect the public. Small entities can also utilize navigable waters outside of the restricted areas and danger zones. Small entities that need to transit the restricted areas and danger zones may do so as long as vessel operators obtain permission from the Commander, JBLE-Eustis, and/or other persons or agencies as he/she may designate. Entities that want to conduct other activities in or near the restricted area may need to obtain other approvals from the applicable Federal, state, or local government authority. The restricted areas are necessary for security of JBLE-Eustis. The danger zones are necessary for protect the public from hazards

associated with training and mission operations. The Corps expects that the economic impact of the restricted areas and danger zones would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this restricted area and danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has determined that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act.

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act.

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit

a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.280 to read as follows:

§ 334.280 James River, Skiffes Creek and Warwick River surrounding Joint Base Langley-Eustis, Virginia; restricted areas and danger zones.

(a) The areas. The datum for the coordinates for the restricted areas and danger zones described in this section is NAD-83.

(1) Army Training and Small Craft Testing Area (restricted area).

Beginning on the shore at latitude 37°09'53" N, longitude 76°36'23" W; thence

westerly to latitude 37°09'53" N, longitude 76°36'59" W; thence westerly to latitude 37°09'50" N, longitude 76°37'45" W; thence southerly to latitude 37°09'00" N, longitude 76°38'05" W; thence southerly to latitude 37°08'22" N, longitude 76°37'55" W; thence due east to the shore at latitude 37°08'22" N, longitude 76°37'20" W; thence northerly following the shoreline to the point of beginning.

(2) 3rd Port Facility (restricted area). An area surrounding the 3rd Port facility, Fort Eustis, beginning at a point on the shoreline at latitude 37°09'53" N, longitude 76°36'23" W; thence northerly, following the shoreline to latitude 37°10'03" N, longitude 76°36'25" W; thence northerly, following the shoreline to latitude 37°10'19" N, longitude 76°36'07" W; thence northerly, across the mouth of Bailey's Creek to latitude 37°10'24" N, longitude 76°36'02" W; thence northerly, following the shoreline to latitude 37°10'29" N, longitude 76°36'06" W; thence westerly, across Skiffes Creek to latitude 37°10'33" N, longitude 76°36'20" W; thence southerly following the shoreline to latitude 37°10'13" N, longitude 76°36'42" W; thence southerly to latitude 37°09'53" N, longitude 76°36'59" W; thence to the point of beginning.

(3) Warwick River and any tributaries, creeks, estuaries, tidal areas, to include Butlers Gut and Jail Creek (restricted area). All navigable waters of the United States as defined in 33 CFR Part 329 within the boundaries of Fort Eustis, westerly of a line connecting the following coordinates: Commencing from the shoreline at latitude 37°09'47" N, longitude 76°33'52" W; thence following the

meanders of the installation boundary along the westerly mean low waterline of Warwick River, thence to a point on the installation boundary at latitude 37°04'35" N, longitude 76°33'19" W.

(4) James River and any tributaries, creeks, estuaries, tidal areas, to include Nells Creek, Locust Neck Creek, Dudleys Creek, Morrisons Creek, Morleys Gut, Blows Creek, and Milstead Creek (restricted area). Navigable waters of the United States as defined at 33 CFR part 329 within the boundaries of Fort Eustis, north/north-easterly of a line connecting the following coordinates: Commencing from the shoreline at latitude 37°04'35" N, longitude 76°33'19" W; thence following the meanders of the installation boundary along the northeasterly mean low waterline of the James River, thence to a point on the installation boundary at latitude 37°10'03" N, longitude 76°36'25" W at a point at the mouth of Skiffes Creek.

(5) Skiffes Creek and any tributaries, creeks, estuaries, tidal areas, to include Baileys Creek (restricted area). All navigable waters of the United States as defined at 33 CFR part 329 within the boundaries of Fort Eustis, easterly of a line connecting the following coordinates: Commencing from a point on the installation boundary at latitude 37°10'03" N, longitude 76°36'25" W; thence northerly, following the shoreline to latitude 37°10'19" N, longitude 76°36'07" W; thence northerly, across the mouth of Bailey's Creek to latitude 37°10'24" N, longitude 76°36'02" W; thence northerly, following the shoreline to latitude 37°10'29" N, longitude 76°36'06" W; thence northerly, following the meanders of

the installation boundary to a point at the centerline of an unnamed tributary at latitude 37°10'36" N, longitude 76°36'01" W; thence southeasterly, following the centerline of the unnamed tributary to a point on the installation boundary at latitude 37°10'24" N, longitude 76°35'32" W.

(6) Danger Zone Warwick River. Navigable waters of the United States as defined at 33 CFR part 329 that encroach upon the boundaries of the Danger Zone of Fort Eustis, westerly of a line connecting the following coordinates: Commencing from the installation boundary at latitude 37°06'44" N, longitude 76°34'04" W; thence to a point at latitude 37°06'44" N, longitude 76°34'02" W; thence to a point at latitude 37°06'35" N, longitude 76°33'56" W; thence to a point at latitude 37°06'28" N, longitude 76°33'57" W; thence to a point at latitude 37°06'15" N, longitude 76°33'30" W; thence to a point at latitude 37°05'43" N, longitude 76°33'13" W; thence to a point at latitude 37°05'33" N, longitude 76°33'17" W; thence to a point at latitude 37°05'13" N, longitude 76°32'53" W; thence to a point at latitude 37°05'03" N, longitude 76°33'09" W; thence following the meanders of the installation boundary along the southwesterly mean low waterline of Warwick River, thence to a point at latitude 37°04'52" N, longitude 76°33'13" W; thence to a point at latitude 37°04'49" N, longitude 76°33'11" W; thence to a point at latitude 37°04'43" N, longitude 76°33'28" W; thence following the meanders of the installation boundary along the southwesterly mean low waterline of Warwick River, thence to a point at latitude 37°04'35" N, longitude 76°33'19" W.

(7) Danger Zone James River. Navigable waters of the United States as defined at 33 CFR Part 329 that encroach upon the boundaries of the Danger Zone of Fort Eustis, north/north-easterly of a line connecting the following coordinates: Commencing from the installation boundary at latitude 37°04'35" N, longitude 76°33'19" W; thence following the meanders of the installation boundary along the easterly mean low waterline of James River to a point at latitude 37°04'39" N, longitude 76°33'39" W; thence to a point at latitude 37°04'33" N, longitude 76°34'15" W; thence to a point at latitude 37°04'52" N, longitude 76°34'19" W; thence to a point at latitude 37°04'52" N, longitude 76°34'18" W; thence to a point at latitude 37°04'60" N, longitude 76°34'20" W; thence to a point at latitude 37°05'19" N, longitude 76°34'51" W; thence to a point at latitude 37°05'53" N, longitude 76°35'00" W; thence to a point at latitude 37°06'03" N, longitude 76°35'08" W; thence following the meanders of the installation boundary along the easterly mean low waterline of James River, thence to a point at latitude 37°06'40" N, longitude 76°35'52" W; thence to a point at latitude 37°06'35" N, longitude 76°36'19" W; thence to a point on the installation boundary at latitude 37°06'50" N, longitude 76°36'21" W.

(b) The regulations. (1) For the restricted areas defined in paragraphs (a)(1) and (2) of this section:

(i) All vessels will contact the 3rd Port Harbor Master on marine channel 12 or 68 prior to entering or transiting these restricted areas.

(ii) The passage of fishing vessels to or from authorized traps, or the transit of commercial vessels, will be coordinated with the 3rd Port Harbor Master on marine channel 12 or 68.

(iii) The harvesting and cultivation of oyster beds or the setting of fish traps within these restricted areas will be allowed provided the commercial fisherman coordinate access to these areas with the 3rd Port Harbor Master on marine channel 12 or 68.

(iv) The Commander, Joint Base Langley-Eustis will, to the extent possible, give public notice from time to time through local news media and the Coast Guard's Local Notice to Mariners of the schedule of intended Department of Defense use of the restricted areas.

(2) For the restricted areas defined in paragraphs (a)(3), (4), and (5) of this section:

(i) Entry into these areas is for official government purposes only, or as authorized by the Commander, Joint Base Langley-Eustis.

(ii) Entry will be coordinated and conducted in accordance with the policies and procedures established by the Commander, Joint Base Langley-Eustis.

(3) For the danger zones defined in paragraphs (a)(6) and (7) of this section:

(i) Persons, vessels or other craft shall not enter or remain in the danger zone when firing is or will soon be in progress unless authorized to do so by the enforcing agency.

(ii) Advance notice of the schedule of small arms firing will be provided via the Joint Base Langley-Eustis webpage.

(iii) All projectiles will be fired to land within the impact area on the Fort Eustis peninsula. Neither the Department of the Army nor the Department of the Air Force will be responsible for damages by such projectiles to nets, traps, buoys, pots, fishpounds, stakes, or other equipment which may be located within these danger zones.

(c) Enforcement. The regulations of this section shall be enforced by the Commander, Joint Base Langley-Eustis, Virginia, and such agencies as the commander may designate.

Dated: November 15, 2019.

Thomas P. Smith,
Chief, Operations and Regulatory Division,
Directorate of Civil Works.

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